

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
BellSouth Corporation)	
)	
Petition for Rulemaking to Change)	RM-11299
the Distribution Methodology for Shared)	
Local Number Portability and Thousands-Block)	
Number Pooling Costs)	
)	
)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association¹ (USTelecom) urges the Federal Communications Commission (Commission) to grant BellSouth's request to initiate a rulemaking proceeding immediately to consider a new method for distributing shared local number portability (LNP) and thousands-block number pooling costs. BellSouth persuasively demonstrates in its Petition for Rulemaking² (Petition) and other USTelecom members can also show that changes in market conditions during the past decade justify opening a rulemaking to consider a new mechanism for determining shared LNP and pooling costs. Furthermore, the Commission's original reasons for supporting the current method of allocating shared industry costs for LNP and pooling based on end-user revenues no longer apply. The Commission has the legal authority and obligation to adopt a different cost-allocation mechanism based on

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks.

² BellSouth Corporation Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs (filed Nov. 3, 2005).

changed market conditions and experience and should, therefore, initiate a rulemaking and begin the process of considering a new allocation mechanism.

DISCUSSION

I. Changes in market conditions justify the Commission's reconsideration of the current LNP and pooling cost allocation mechanism.

BellSouth effectively shows that the current method of allocating shared LNP and pooling costs based on revenues no longer satisfies the mandate of section 251(e)(2) of the Telecommunications Act of 1996 (the 1996 Act)³ that all communications carriers bear the costs of number administration and LNP on a “competitively neutral” basis. The current allocation mechanism requires certain carriers to pay for costs that they do not cause. In BellSouth’s case, for example, while the percentage of transactions that it has generated in the last three years has declined, its allocated portion of the shared LNP and pooling costs over the same period has more than quadrupled, rising from \$1.4 million in 2001 to \$6.1 million in 2004.⁴ BellSouth attributes the increased volume of billable LNP and pooling transactions to increased porting and pooling activities, especially since the implementation of wireless LNP in 2003.⁵ These increased porting and pooling activities translate into higher shared costs for a region, and distribution of those costs is not competitively neutral under the current revenue-based allocation mechanism. For instance, for the first nine months of 2005, BellSouth generated approximately two percent of the total number of billable transactions for the Southeast region but paid more than 20 percent of the total shared costs for the region.⁶

³ 47 U.S.C. § 251(e)(2).

⁴ Petition at 20.

⁵ See Petition at 20.

⁶ *Id.* at 23.

North Pittsburgh Telephone Company, another USTelecom member, estimates that its shared LNP costs increased 65% from 2004 to 2005. At the same time, the company has not seen an increase in end-user telecommunication revenues reported on Form 499 to support the increase: its service provider allocation percentage has not changed significantly for the corresponding time period. North Pittsburgh is responsible for generating only a tiny percentage of the region's LNP and pooling charges. This is clearly supported by the number of porting events the company caused in 2004 and 2005—only two and four, respectively.

BellSouth suggests that the Commission adopt a mechanism for allocating shared LNP and pooling costs based on the provider's use of the regional databases in order to insure that all communications carriers bear the costs of number administration and LNP on a "competitively neutral" basis. USTelecom urges the Commission to grant BellSouth's request so that it may begin to study new means of allocating shared costs and consider how best to meet its requirement of achieving competitive neutrality. The Commission should initiate the requested rulemaking proceeding as soon as possible. Re-examining the current cost-allocation method is especially timely given that the Commission is re-examining the revenues-based contribution mechanism used to fund universal service.

II. The Commission's original reasons for supporting allocation based on end-user revenues are no longer applicable.

The world of communications has changed dramatically since 1998 when the Commission adopted its LNP cost distribution rules, and the reasons the Commission chose the revenue-based allocation mechanism are no longer applicable. As BellSouth points out, the Commission acknowledged that its choice of a revenue-based mechanism was a significant departure from the agency's usual application of the principles of cost causation in evaluating the

costs and rates of telecommunications services.⁷ The Commission declined to adopt a mechanism based on use largely for two reasons: (1) it was worried that doing so might hinder the ability of CLECs to compete and (2) it worried that carriers would not download broadcast messages to avoid incurring charges.⁸ The Commission need no longer be concerned with these issues. First, CLECs, as full-fledged competitors, do not require the Commission's protection to establish market share.⁹ Second, as BellSouth explained in the Petition, broadcast messages—which are merely messages sent to service providers in a region to notify them that a record in the NPAC has been added, deleted, or modified—do not constitute billable transactions.¹⁰ Therefore, the Commission's concern about carriers choosing not to download broadcast messages in order to avoid incurring billable transactions does not reflect reality.

III. The Commission has not only legal authority but a legal obligation to adopt a different mechanism for distributing shared LNP and pooling costs.

The Commission has statutory authority to ensure that all LNP and pooling costs are borne by providers in a “competitively neutral” manner. The Commission—not Congress—interpreted the term “competitively neutral” and determined that the revenue-based allocator fit its interpretation. If the current market conditions dictate the consideration of a different allocator, the Commission is free to modify its previous interpretation of the term.¹¹ Furthermore, the Commission not only has the authority to adopt a new distribution method, but it has a statutory obligation to do so. The Commission has a statutory obligation to satisfy the

⁷ *Id.* at 16.

⁸ *Id.*; *see also* n. 54 and 55.

⁹ *See* Petition n. 39.

¹⁰ *See id.* at 18.

¹¹ *See* Petition at 26 and n. 77.

mandate of section 251(e)(2) of the 1996 Act by ensuring that all shared LNP and pooling costs are borne by providers in a competitively neutral manner.

CONCLUSION

As BellSouth states, “eight years of successful LNP activity, increased participation in thousands-block number pooling, the maturation of the CLEC industry, increased competition in the local services market, escalating shared LNP and pooling costs, and asymmetric cost burdens weigh heavily in favor of re-examining the Commission’s cost-distribution rules.”¹² For all of these reasons, USTelecom urges the Commission to grant BellSouth’s Petition and initiate a proceeding to examine the existing method and consider new methods of allocating shared LNP and pooling costs among providers.

Respectfully submitted,

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¹² *Id.* at 27.